

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

RETHINK35, SAVE OUR SPRINGS
ALLIANCE, AUSTIN JUSTICE COALITION,
PEOPLE ORGANIZED IN DEFENSE OF
EARTH AND HER RESOURCES (PODER),
DOWNTOWN AUSTIN NEIGHBORHOOD
ASSOCIATION, PARENTS' CLIMATE
COMMUNITY, EAST TOWN LAKE CITIZENS
NEIGHBORHOOD ASSOCIATION,
SOUTHEAST AUSTIN NEIGHBORS AND
RESIDENTS ORGANIZED FOR
ENVIRONMENTAL JUSTICE (SANAR),
HANCOCK NEIGHBORHOOD
ASSOCIATION, MUELLER NEIGHBORHOOD
ASSOCIATION, FRIENDS OF AUSTIN
NEIGHBORHOODS, FRIENDS OF HYDE
PARK, SUNRISE MOVEMENT AUSTIN,
ENVIRONMENT TEXAS, TEXAS PUBLIC
INFORMATION RESEARCH GROUP, and
CELIA ISRAEL,

Plaintiffs,

v.

TEXAS DEPARTMENT OF
TRANSPORTATION (TXDOT), MARC
WILLIAMS, in his official capacity as Executive
Director of TXDOT, UNITED STATES
DEPARTMENT OF TRANSPORTATION
(USDOT), PETE BUTTIGIEG, in his official
capacity as Secretary of USDOT, UNITED
STATES FEDERAL HIGHWAY
ADMINISTRATION (FHWA), and SHAILEN
BHATT, in his official capacity as Administrator
of FHWA,

Defendants.

Case No. 1:24-cv-00092

STIPULATED DISMISSAL

Pursuant to Federal Rule of Civil Procedure 41, Plaintiffs Rethink35, Save Our Springs
Alliance, Austin Justice Coalition, People Organized in Defense of Earth and Her Resources
(PODER), Parents' Climate Community, Downtown Austin Neighborhood Association (DANA),
East Town Lake Citizens NA, Southeast Austin Neighbors and Residents Organized for
Environmental Justice (SANAR), Hancock Neighborhood Association, Mueller Neighborhood

Association, Friends of Austin Neighborhoods (FAN), Friends of Hyde Park, Sunrise Movement Austin, Environment Texas, TexPIRG, and Celia Israel, (collectively, “Plaintiffs”) and Defendants United States Department of Transportation (“USDOT”), and Secretary Pete Buttigieg in his official capacity as Secretary of the USDOT (collectively, “USDOT Defendants”); the United States Federal Highway Administration (“FHWA”), and Shailen Bhatt in his official capacity as Administrator of the FHWA (collectively, “FHWA Defendants”); and the Texas Department Of Transportation (“TxDOT”); stipulate to the dismissal of all claims against the USDOT Defendants and FHWA Defendants as follows:

WHEREAS Plaintiffs filed their Complaint on January 26, 2024, challenging TxDOT’s August 18, 2023 Final Environmental Impact Statement (“FEIS”) and Record of Decision (“ROD”) approving the I-35 Capital Express Central Project from US 290 East to US 290 West/SH71 (the “Project”);

WHEREAS TxDOT completed a Draft Environmental Impact Statement (“DEIS”) dated December 2022 to evaluate the environmental impacts of alternatives considered to meet the purpose and need of the Project;

WHEREAS TxDOT participates in the Surface Transportation Project Delivery Program (a.k.a. “NEPA Assignment Program”) pursuant to 23 U.S.C. § 327, and the TxDOT and FHWA executed a memorandum of understanding (“MOU”) on December 9, 2014, which was renewed on December 9, 2019, under 23 U.S.C. 327(b)(4)(C) and (c);

WHEREAS the MOU provides that the FHWA assigns, and TxDOT assumes, the USDOT’s responsibilities and liabilities for the environmental review, consultation and other actions required under the National Environmental Policy Act, 42 U.S.C. § 4321 et seq.

(“NEPA”) and other Federal environmental laws listed therein, without further approval of the FHWA or the USDOT, for all “highway projects” defined in the MOU;

WHEREAS the Project is one such “highway project” for which TxDOT has assumed total responsibility and liability;

THEREFORE, the parties stipulate as follows:

1. TxDOT is solely responsible and liable for NEPA compliance of the Project without further approval of FHWA, pursuant to the MOU and 23 U.S.C. § 327.
2. The USDOT Defendants and the FHWA Defendants are not necessary parties to this litigation under Federal Rule of Civil Procedure 19.
3. The claims against the USDOT Defendants and the FHWA Defendants, including those brought under the Administrative Procedure Act, 5 U.S.C. § 706(2), the National Environmental Policy Act 42 U.S.C. § 4321 et seq., and Section 6(f) of the Land and Water Conservation Fund (“LWCF”) Act are dismissed without prejudice.
4. Nothing in this Stipulated Dismissal shall be construed to deprive a federal official of authority to revise, amend or promulgate regulations, or issue final decisions related to the Project. Nothing in this Stipulated Dismissal is intended to or shall be construed to waive any obligation to exhaust administrative remedies; to constitute an independent waiver of the United States’ sovereign immunity; to change the standard of judicial review of federal agency actions under the Administrative Procedure Act, 5 U.S.C. §§ 701-06; or to otherwise extend or grant this Court jurisdiction to hear any matter.

Respectfully submitted this 12th day of April, 2024.

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CERTIFICATE OF SERVICE

I hereby certify that on April 12, 2024, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will automatically notify via email all counsel of record.

Nuria de la Fuente
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